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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Respondent,
v.
PERFECTO ACEVEDO SANCHEZ,
Petitioner.

No. CR-06-2140-FVS

ORDER DENYING PETITIONER'S MOTIONS TO ALTER OR AMEND THE COURT'S MAY 16, 2011 ORDER DISMISSING HIS SECTION 2255 PETITION AND FOR LEAVE TO AMEND HIS PRIOR PETITION

THIS MATTER comes before the Court without oral argument based upon Petitioner's two recent motions: a motion to alter or amend the Court's May 16, 2011 order dismissing his Section 2255 petition (Ct. Rec. 311), and a motion for leave to amend his prior Section 2255 petition (Ct. Rec. 310). Petitioner is proceeding pro se.

BACKGROUND

On October 4, 2007, Petitioner pleaded guilty, pursuant to a written plea agreement, to counts 1 and 3 of the indictment (Ct. Rec. 179), and was subsequently sentenced to a term of imprisonment of 210 months (Ct. Rec. 235). Judgment was entered on February 7, 2008. No direct appeal was taken.

On January 27, 2009, Petitioner moved the Court, pursuant to U.S.C. § 2255, for an order affording him a direct appeal proceeding, claiming his counsel erroneously failed to file a notice of appeal. (Ct. Rec. 252). On February 10, 2009, Respondent filed a motion requesting that the Court vacate the judgment in this matter and reenter judgment to allow Petitioner to file a direct appeal. (Ct. Rec. 257).

1 On February 12, 2009, the Court vacated and reentered judgment to
2 allow the appeal period to restart. (Ct. Rec. 259). On February 23,
3 2009, Petitioner filed a Notice of Appeal. (Ct. Rec. 261). However,
4 Petitioner later voluntarily withdrew this appeal. An order and
5 mandate was issued by the Ninth Circuit on October 1, 2009. (Ct. Rec.
6 284). Petitioner filed a Section 2255 motion on October 5, 2010
(dated September 30, 2010). (Ct. Rec. 286). Petitioner's Section
7 2255 petition was dismissed by the Court on May 16, 2011. (Ct. Rec.
8 309).

9 **DISCUSSION**

10 Petitioner's instant motions request that the Court reopen and
11 reconsider the dismissed Section 2255 petition and then permit him to
12 amend the dismissed petition to add ineffective assistance of counsel
13 claims.

14 **I. Motion for Reconsideration**

15 Fed.R.Civ.P. 60(b)(6) pertains to civil actions and proceedings.
16 Fed.R.Civ.P. 1. The civil rules do not apply to federal criminal
17 proceedings in general, but may be applied to a post-conviction motion
18 under 28 U.S.C. § 2255. *See Rule 12 of Rules Governing Section 2255*
19 *Proceedings For The United States District Courts.* Fed.R.Civ.P.
20 60(b)(6) can be employed to seek relief from an order denying a
21 Section 2255 motion.

22 Reconsideration is available under Rule 60(b) upon a showing of
23 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
24 discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied
25 or discharged judgment; or (6) any other reason justifying relief.
26 Fed.R.Civ.P. 60(b). Petitioner has demonstrated no new or different
facts or circumstances, newly discovered evidence, or mistake,

1 inadvertence, surprise, or excusable neglect to warrant
2 reconsideration. Nor has he alleged any other reason justifying
3 relief. Petitioner thus fails to present a valid basis for the Court
4 to reconsider its prior order dismissing his Section 2255 petition.
5 Petitioner's "Motion to Alter or Amend Order Dismissing Petitioner's
6 Section 2255 Motion" (Ct. Rec. 311) is **DENIED**.

7 **II. Motion to Amend**

8 Petitioner's October 5, 2010 Section 2255 motion was dismissed by
9 the Court on May 16, 2011. As indicated above, Petitioner has failed
10 to demonstrate a basis for reconsideration of the Court's order
11 dismissing the petition. Since the petition has been dismissed by the
12 Court, there is no petition presently before the Court which may be
13 amended. Petitioner's "Motion for Leave to Amend Original Section
14 2255 Motion" (Ct. Rec. 310) is **DENIED**.

15 The Court being fully advised, **IT IS HEREBY ORDERED**:

16 1. Petitioner's "Motion to Alter or Amend Order Dismissing
17 Petitioner's Section 2255 Motion" (Ct. Rec. 311) is **DENIED**.

18 2. Petitioner's "Motion for Leave to Amend Original Section 2255
19 Motion" (Ct. Rec. 310) is **DENIED**.

20 **IT IS SO ORDERED.** The District Court Executive is directed to
21 enter this order and furnish copies to **PETITIONER** and counsel for the
22 Respondent.

23 **DATED** this 27th day of June, 2011.

24

25 S/Fred Van Sickle
26 Fred Van Sickle
Senior United States District Judge